

The Right to Privacy: Historical and Conceptual Framework

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ABSTRACT *The history of privacy has evolved through several stages, beginning with protection against physical intrusions into households and extending today to encompass broader values such as human dignity and liberty. Despite these developments, no single, universally accepted definition of privacy exists. While reductionists deny that privacy has independent value, this view has been weakened by the widespread recognition of privacy as a fundamental right. The most distinctive feature of privacy lies in the sanctity of information itself, irrespective of whether that information is true or false. The general discourse surrounding privacy can be summarized through the following notions: liberty, control, and dignity. Together, these notions can form the basis for a comprehensive definition of privacy. Therefore, any definition of privacy must include them all, particularly dignity, as it reflects the intrinsic value of privacy. Moreover, beyond these moral justifications, a sound definition of privacy should also specify the types of data that merit protection, ensuring clarity and consistency in legal interpretation.*

KEYWORDS *Privacy, home, liberty, control, and dignity.*

1. Introduction

Privacy, since antiquity, has attracted the attention of scholars and legal theorists and has been manifested in different forms across various timeframes. Warren and Brandeis traced privacy through different stages: initially, the law addressed only physical interferences, such as battery or trespass to tangible property like land and livestock; later, the law began to recognize the protection of human spiritual interests, including feelings and intellect; and currently, privacy encompasses the right to enjoy life, liberty, and personal autonomy.¹ While some scholars have found it difficult to provide a definition of privacy, others have

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¹ Samuel D. Warren, and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review* 4, no. 5 (1890): 193, <http://links.jstor.org/sici?sici=0017-811X%2818901215%294%3A5%3C193%3ATRTP%3E2.0.CO%3B2-C>, accessed 20 September 2025.

attempted to do so; however, there is no unanimous agreement on a single definition.

With the rapid development of technology, privacy concerns have increased unprecedentedly. For the first time in human history, personal privacy has become particularly vulnerable. This has led countries to give greater attention to privacy, and by now, many nations have enacted data protection laws. Currently, 79% of countries have legislation addressing data protection and privacy.²

The problem addressed in this study lies in the absence of a universally accepted and comprehensive understanding of privacy, despite certain commonalities shared among scholarly perspectives. The general scholarly discussion on privacy often revolves around three key notions: liberty, control, and dignity. However, considering these elements in isolation fails to capture the full meaning of privacy and may have a profound impact on the overall landscape of privacy protection. For the purposes of this study, the following research questions will be explored: What is the historical evolution of the concept of privacy? To what extent do scholars find privacy easy to define? How do reductionists conceptualize privacy? In contrast, how do coherentists differ in their understanding of privacy?

The aim of this study is to examine the meaning of the concept of privacy, beginning with its roots at different points in history and considering the various approaches that seek to explain it, to show that these perspectives cannot stand alone; rather, by combining them, we can identify the essential elements of a definition of privacy. To achieve this goal, the study is divided into two chapters: the first addresses the historical background of privacy, while the second explores the concept of privacy.

2. The historical background

Although, there is no exact time that privacy can be traced back to, we can find certain aspects or elements of privacy in different eras. Even if those elements are not the same as modern ones, their goal and motive in some ways serve the privacy concept. Since ancient times, people have valued privacy,³ which has evolved with time. What is deemed private has varied across different eras and cultures. Furthermore, there may be differences between what is socially regarded as private and what the law protects as such.⁴

Scholars have traced the origins of privacy back to ancient civilizations. Barrington Moore, the sociologist of totalitarian regimes, underlined that

² United Nations Conference on Trade and Development (UNCTAD), “Data Protection and Privacy Legislation Worldwide,” *UNCTAD*, accessed September 20, 2025, <https://unctad.org/page/data-protection-and-privacy-legislation-worldwide>.

³ Daniel J. Solove, *Nothing to Hide: The False Tradeoff between Privacy and Security* (New Haven: Yale University Press, 2011), 4.

⁴ Adrienn Lukács, “What Is Privacy? The History and Definition of Privacy,” in *Tavaszi Szél 2016 Tanulmánykötet I.*, ed. Gábor Keresztes (Budapest: Doktoranduszok Országos Szövetsége), 256.

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'totalitarian' regimes throughout history have attempted to control their citizens by either limiting privacy or using surveillance.⁵ Therefore, it is not surprising that privacy has long been a subject of legal discussion. For instance, the Code of Hammurabi featured a section, which forbade invading someone's home, and Roman law also dealt with the issue.⁶

The first ancient reference to the existence of a distinct private domain, according to many privacy scholars, was Aristotle's division between the private domestic sphere of the family, namely the *oikos*, and the public sphere of politics and political activity.⁷ According to Arendt's interpretation of Aristotle, the private realm is distinct from the public and is connected to household survival and necessity. It involves dominance and power, such as ruling over slaves. As a result, privacy is seen as a sphere lacking freedom, and a state of deprivation, keeping people from exercising their greatest human potential such as political freedom.⁸

Historically, privacy was connected to the house, to family life, and to (personal) correspondence. Between the 14th and 18th century, people appeared in court for eavesdrop or for opening and reading personal letters.⁹ In *Leviathan* (1651), Hobbes argues that individuals surrender many of their rights to a sovereign in exchange for peace and order, except certain natural rights, foremost among them the right to self-preservation. Based on this principle, individuals retain the right not to confess to crimes unless granted a pardon.¹⁰ Hobbes thus contributes to shaping the modern understanding of privacy by affirming that natural human drive for self-preservation- innate and inescapable- legitimizes resistance to threats.¹¹

English common law has long prohibited eavesdropping. In 1769, Blackstone defined it as listening "under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales."¹² He described a person's home as their 'castle,' protected against

⁵ Sjoerd Keulen., and Ronald Kroeze, "Privacy from a Historical Perspective," *Handbook Privacy Studies* (2018): 23.

⁶ Gianmarco Cifaldi, "Evolution of Concepts of Privacy and Personal Data Protection under the Influence of Information Technology Development," *Sociology and Social Work Review* 7, no. 1 (2023): 36.

⁷ Keulen and Kroeze, "Privacy from a Historical Perspective," 24.

⁸ Judith A. Swanson, *The Public and the Private in Aristotle's Political Philosophy* (Ithaca: Cornell University Press, 1994), 9.

⁹ Jeroen Holvast, "History of Privacy," in *IFIP Advances in Information and Communication Technology*, ed. Matyáš Vashek., Petr Švenda, Simone Fischer-Hübner, Daniel Cvrček (Springer, 2009), 15. https://link.springer.com/chapter/10.1007/978-3-642-03315-5_2

¹⁰ Thomas Hobbes, *Leviathan* (1651; repr., Oxford: Oxford University Press, 2010), 155.

¹¹ Swanson, *The Public and the Private*, 9.

¹² Solove, *Nothing to Hide*, 4.

intrusion, justifying penalties for eavesdropping and limiting civil authorities' entry, a principle later upheld by 19th-century American courts.¹³

From 1790 to 1840, during the early years of the U.S. Census, there was very little concern about the confidentiality of personal data. The public's perception according to which data should be kept private was not yet taken hold.¹⁴ The census actually mandated that they be displayed in a public area in order to allow people to verify the accuracy of their submission. Throughout the nineteenth century, the census director was informally tasked with protecting the privacy of businesses and survey respondents, but by the early twentieth century, presidential proclamations formally acknowledged the necessity for privacy.¹⁵ Although a few objected, mostly for religious reasons, the majority of Americans were unconcerned about government data use. Some critics cited the Biblical warning, where King David's census brought a plague killing 70,000, while others feared censuses could lead to higher taxes or military conscription.¹⁶

Interestingly, in 1844, at the Austrian government's request, the British authorities secretly opened private letters addressed to Italian revolutionary Giuseppe Mazzini in London. Mazzini discovered surveillance by placing poppy seeds and sand in his letters, which disappeared when they were opened. This covert surveillance, justified by claims of national security, sparked an early and significant controversy over government surveillance and privacy rights.¹⁷

Since the end of the 19th century, the intention of controlling one's own information has been the driving force behind the shift in emphasis towards personal information.¹⁸ A very important step was the development of the modern concept of privacy by Brandeis and Warren in 1890, namely the first U.S. publication to argue for a right to privacy.¹⁹ They defined privacy as "the right

¹³ David J. Seipp, "The Right to Privacy in Nineteenth-Century America," *Harvard Law Review* 94 (1981): 1892, reprinted at Boston University School of Law Scholarly Commons, https://scholarship.law.bu.edu/faculty_scholarship/1568/, accessed 20 August 2025.

¹⁴ United States Census Bureau, *Census Confidentiality and Privacy: 1790–2002*, accessed August 13, 2025, <https://www2.census.gov/library/publications/2003/comm/monograph-confidentiality-privacy.pdf>.

¹⁵ U.S. Census Bureau, "The History of Privacy and Confidentiality at the U.S. Census Bureau," *U.S. Department of Commerce*, accessed August 12, 2025, <https://www.census.gov/about/history/bureau-history/agency-history-timeline/privacy-confidentiality.html>.

¹⁶ United States Census Bureau, *Census Confidentiality and Privacy: 1790–2002*, <https://www2.census.gov/library/publications/2003/comm/monograph-confidentiality-privacy.pdf>, accessed 13 August 2025.

¹⁷ "Surveillance, Privacy and History," History & Policy, *Policy Paper*, accessed February 25, 2025, <https://historyandpolicy.org/policy-papers/papers/surveillance-privacy-and-history/>.

¹⁸ Holvast, "History of Privacy," 15.

¹⁹ "History of Privacy Timeline," Safe Computing (University of Michigan), accessed August 4, 2025. <https://safecomputing.umich.edu/protect-privacy/history-of-privacy-timeline>.

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to be let alone.” The idea sparked widespread recognition, started to develop and became a basic human right in western societies.²⁰

The modern concept of privacy originated in tort law. Courts provided civil remedies for personal wrongs.²¹ Before Warren and Brandeis, Anglo-American common law had already protected several interests that modern lawyers would associate with privacy, such as evidentiary privileges, blackmail laws, and duties of confidentiality within certain relationships. However, their article fundamentally reshaped this legal landscape.²²

In the United States, the public debate on privacy began shortly after World War II.²³ In the early 1970s, privacy became a central topic in human rights debates. In 1968, Beck highlighted the growing use of listening devices by commercial agencies, such as car dealers bugging vehicles to gauge customers’ price limits, and dance studios eavesdropping on clients to improve sales tactics.²⁴

In 1960, Prosser, one of the most influential legal scholars of his time, published the article “Privacy,”²⁵ in which he identified four torts for seeking damages.²⁶ In 1967, Westin defined privacy on freedom, control, and self-determination.²⁷

The right to privacy was advanced to the status of a human right during the twentieth century. It was a completely new addition to the catalogue of the Universal Declaration of Human Rights, and it is unique in that it has no predecessors in state constitutions or fundamental laws.²⁸

After the adoption of the Universal Declaration of Human Rights (UDHR)²⁹ in 1948, human rights principles including privacy have gained much acceptance. This was further strengthened by the adoption of the International Covenant on

²⁰ Adrienn Lukács, “What is privacy,” 256.

²¹ Edward J. Bloustein, *Individual and Group Privacy* (New York: Taylor & Francis, 2003), 2–3.

²² Neil M. Richards, and Daniel J. Solove, “Prosser’s Privacy Law: A Mixed Legacy,” *California Law Review*, *Washington U. School of Law Working Paper* 98, no 10 (2010): 1891.

²³ Holvast, “History of Privacy,” 15.

²⁴ “(Canada’s Human Rights History),” Dominique Clément, *HistoryOfRights.ca* accessed October 8, 2025. www.HistoryOfRights.ca.

²⁵ Edward J. Blaustein, *Individual and Group Privacy*. 2nd ed., with a new introduction by Nathaniel J. Pallone. Taylor & Francis, 2003. 2–3.

²⁶ William L. Prosser, “Privacy,” *California Law Review* 48, no. 3 (1960): 389.

²⁷ Holvast, “History of Privacy,” 16.

²⁸ Beate Roessler and Judith DeCew, “Privacy,” *Stanford Encyclopedia of Philosophy* (Winter 2023 ed.), ed. Edward N. Zalta and Uri Nodelman, <https://plato.stanford.edu/archives/win2023/entries/privacy/>, accessed September 10, 2025.

²⁹ United Nations General Assembly, *Universal Declaration of Human Rights*, Res. 217 A (III), adopted December 10, 1948, art. 12.

Civil and Political Rights (ICCPR) 1966³⁰, and the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.³¹

In 1981, concrete guidelines for protecting personal data were created by (Convention 108). Later, in 2000, the European Union's Charter of Fundamental Rights³² made a formal distinction between privacy and data protection.³³

In order to safeguard individual rights and harmonize data protection regulations for market integration, the EU adopted the Data Protection Directive (95/46/EC) in 1995³⁴. It was superseded in 2016 by the General Data Protection Regulation (GDPR)³⁵, which provided a comprehensive regulatory framework and considered a significant advancement in information policy.

At the national level, the US Freedom of Information Act 1967³⁶ and Data protection act 1970 of the German state of Hesse,³⁷ followed by Sweden's data protection law of 1973 (*Datalagen*),³⁸ were among the first data protection laws enacted decades before the Internet and the World Wide Web became ubiquitous.³⁹ There are an increasing amount of data laws. Currently, 137 out of 194, or 79% of countries have passed legislation pertaining to data protection and

³⁰ United Nations General Assembly, *International Covenant on Civil and Political Rights*, Res. 2200A (XXI), adopted December 16, 1966, entered into force March 23, 1976, art. 17.

³¹ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, ETS No. 005, as amended, entered into force September 3, 1953, art. 8.

³² European Union, *Charter of Fundamental Rights of the European Union*, proclaimed December 7, 2000, *Official Journal of the European Communities* C 364 (December 18, 2000), arts. 7–8.

³³ Council of Europe, *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data* (Convention 108), Strasbourg, January 28, 1981, arts. 7–8.

³⁴ Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *Official Journal of the European Communities* L 281 (November 23, 1995).

³⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council, *General Data Protection Regulation*, *Official Journal of the European Union* L 119 (May 4, 2016).

³⁶ “A Brief History of Data Protection: How Did It All Start?,” INPLP accessed July 11, 2024, <https://inplp.com/latest-news/article/a-brief-history-of-data-protection-how-did-it-all-start/>.

³⁷ Hesse (Germany), *Data Protection Act* (HE 1970), *Law and Ordinance Gazette Hesse* 1970, p. 625, accessed October 23, 2025, <https://starweb.hessen.de/cache/GVBL/1970/00041.pdf>.

³⁸ “Data Protection in Sweden,” GDPRhub, accessed July 11, 2024, <https://gdprhub.eu/Data-Protection-in-Sweden#History>.

³⁹ “U.S. Data Privacy Laws to Enter New Era in 2023,” Fredric D. Bellamy, *Reuters*, 12 January 2023, accessed 11 July 2024, <https://www.reuters.com/legal/legalindustry/us-data-privacy-laws-enter-new-era-2023-2023-01-12>.

privacy. An additional 15% have no data protection legislation at all, while 9% have draft legislation pending.⁴⁰

To sum up, Certain actions, rooted in human nature, have consistently triggered concerns that can be grouped around what we now understand as privacy, even if the term itself was not always used. From Aristotle's distinction between public and private life, boundaries were drawn between the concept of public life that is more open and private life that is more protected. Over time, the approach to private life gained certain privileges, shaped by the developments societies have undergone. In the modern era, the spiritual notion of privacy replaced its earlier material-based concept. With technology advancement, however, privacy has become more complex, leading to many challenges in defining it and setting its boundaries.

3. The concept of privacy

Privacy initially focused on physical intrusion. However, with the recognition of spiritual intrusion and the advancement in technologies, the issue has attracted much more debate. In ordinary language as well as in philosophical, political, and legal discourse, the term "privacy" has no single definition, analysis, or meaning. The idea of privacy has deep historical roots in discussions of legal, ethical, sociological, and anthropology.⁴¹ Posner argues that it is "elusive and ill defined. Much ink has been spilled in trying to clarify its meaning".⁴² The European Court of Human Rights and several privacy scholars agree that it is not possible to provide a comprehensive legal definition of privacy protection.⁴³ Arthur Miller argues "that it is difficult to define because it is exasperatingly vague and evanescent."⁴⁴ Numerous jurists made attempts to define privacy, but most of these definitions only highlight one aspect of it, because privacy is incomprehensible and the components that make up an individual's private sphere are in constant change.⁴⁵

A number of scholars have surveyed the interests that the law protects under the rubric of privacy and have come to the conclusion that they are separate and unrelated.⁴⁶ According to this viewpoint, reductionists argue that privacy is not a

⁴⁰ "Data Protection and Privacy Legislation Worldwide," UNCTAD, accessed august 20, 2025, <https://unctad.org/page/data-protection-and-privacy-legislation-worldwide>, accessed July 19, 2024.

⁴¹ Beate Roessler and Judith DeCew, "Privacy," *Stanford Encyclopedia of Philosophy* (Winter 2023 ed.), ed. Edward N. Zalta and Uri Nodelman, <https://plato.stanford.edu/archives/win2023/entries/privacy/>, accessed September 10, 2025.

⁴² Richard A. Posner, "The Right of Privacy," *Sibley Lecture Series* (1978): 393, https://digitalcommons.law.uga.edu/lectures_pre_arch_lectures_sibley/22.

⁴³ Adrienn Lukács, "What is privacy," 256.

⁴⁴ Daniel J. Solove, "Conceptualizing Privacy," *California Law Review* 90, no. 4 (2002): 1089, <https://doi.org/10.2307/3481326>.

⁴⁵ Adrienn Lukács, "What is privacy," 256.

⁴⁶ Solove, "Conceptualizing Privacy," 1088.

unique right, but can be explained by reducing it to infringements on other rights like property, liberty, or physical integrity.⁴⁷ Thompson, on the other hand, argues that the concept of privacy serves no useful function, for what we call privacy really amounts to a collection of fundamental interests.⁴⁸ In his article, Prosser repudiates Warren and Brandeis by suggesting that privacy is not an independent value at all but rather a composite of the interests in reputation, emotional tranquility and intangible property.⁴⁹ Prosser disagreed with the direction of privacy law, notwithstanding his restrained tone. He was concerned that its haphazard growth threatened both new doctrines such as intentional infliction of emotional distress, and established ones such as defamation. He therefore aimed to steer privacy law in a more cautious and constrained manner.⁵⁰ Prosser divided Warren and Brandeis' nebulous "right to privacy" into a taxonomy of four torts: ⁵¹ invasion of solitude and seclusion, public revelation of private facts, false light, and misuse of one's name or likeness.⁵² He argued that these four torts protect four separate interests, none specifically tied to privacy: freedom from mental distress in intrusion cases, reputation in public disclosure and false light cases, and property rights in one's name or likeness in appropriation cases.⁵³

However, the reductionist position has been significantly undermined by the explicit recognition of privacy as an independent human right and it has further been challenged by coherentists, who defend privacy as a fundamental, integrated value rather than as a mere aggregation of other rights.⁵⁴ Warren and Brandeis distinguish privacy from slander and libel by contrasting the type of injury each law addresses. Slander and libel are concerned with material injury to the external reputation, namely how they are viewed by the community. Privacy, in contrast, protects spiritual injury to internal feelings and emotional well-being, independent of whether the published information is true or false.⁵⁵ In other words, the information itself is protected, regardless of whether it is true or not. Similarly, Parent argued that privacy is the condition of the absence of undocumented personal information about oneself that is possessed by others.⁵⁶ The controversy surrounding privacy did not end there; the debate over whether it is grounded in liberty or dignity remains central, particularly in the context of the European Union and the United States. Privacy protections within the EU emphasize personal dignity, safeguarding an individual's image, name, and

⁴⁷ Adam Moore, "Defining Privacy," *Journal of Social Philosophy* 39, no 3 (2008): 412.

⁴⁸ James Q. Whitman, "The Two Western Cultures of Privacy: Dignity versus Liberty," *Yale Law Journal* 113, no. 6 (2004): 1161–1162.

⁴⁹ Blaustein, *Individual and Group Privacy*, 1.

⁵⁰ Richards and Solove, "Prosser's Privacy Law," 1890.

⁵¹ Richards and Solove, "Prosser's Privacy Law," 1888.

⁵² Prosser, "Privacy," 389.

⁵³ Blaustein, *Individual and Group Privacy*, 4.

⁵⁴ Ferdinand Schoeman, "Privacy," *Stanford Encyclopedia of Philosophy*, 2002, <https://plato.stanford.edu/entries/privacy/>, accessed September 2025.

⁵⁵ Warren and Brandeis, "The Right to Privacy," 197.

⁵⁶ Adam Moore, "Defining Privacy," *Journal of Social Philosophy* 39, no 3 (2008): 412.

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reputation,⁵⁷ much like the concept suggested by Warren and Brandeis. By contrast, the American approach prioritizes liberty, particularly freedom from state intrusion, reflecting the eighteenth-century ideal of privacy within one's home.⁵⁸ Unlike Roman law, however, the U.S. legal system provides no remedy for purely psychological suffering, insult, or intentional harm to a person's sense of honor.⁵⁹

The right to privacy was described by Warren and Brandeis in 1891 as the right to be let alone and as the freedom to determine, under ordinary circumstances, what his or her thoughts, feelings, and emotions shall be when communicating with others.⁶⁰ Since then, three terms have been employed in virtually every publication: freedom, control, and self-determination.⁶¹

Jan Holvast argues that privacy is fundamentally related to the most personal facets of being human, and historically. Privacy has always been associated with the home, family life, and (private) letters.⁶²

Solove approached privacy by providing a list of torts or headings that form privacy, arguing that all academic and legal literature on privacy can be grouped under six headings: "the right to be let alone, limited access to the self, secrecy, control of personal information, personhood, and intimacy."⁶³ Solove did not create a new concept of privacy but instead synthesized existing theories, implying that earlier theories had already addressed all major aspects of privacy. In 1978, Posner avoided the definitional problem by simply noting that one aspect of privacy is the withholding or concealment of information.⁶⁴ Hungarian jurist Mate Daniel Szabo viewed privacy as "the right of a person to control information about themselves."⁶⁵ Alan Westin defines privacy in light of each of these points: freedom, control, and self-governance.⁶⁶ He defined privacy as "the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others".⁶⁷ There has hardly been a publication on this subject since 1967 that does not include this definition.⁶⁸ However, the word "claim" is not as strong as right, and it does not necessarily carry legal enforcement, in other words, having a claim is not the same as having a right.

The entire discussion surrounding the concept of privacy can be summarized in terms of autonomy, control, freedom, and personhood. While autonomy and

⁵⁷ "History of Privacy Timeline," Safe Computing.

⁵⁸ James Q. Whitman, "The Two Western Cultures," 1161.

⁵⁹ Warren and Brandeis, "The Right to Privacy," 198.

⁶⁰ Holvast, "History of Privacy," 16.

⁶¹ Holvast, "History of Privacy," 16.

⁶² Holvast, "History of Privacy," 15.

⁶³ Solove, "Conceptualizing Privacy," 1094.

⁶⁴ Posner, "The Right of Privacy," 393.

⁶⁵ Cifaldi, "Evolution of Concepts of Privacy," 38.

⁶⁶ Holvast, "History of Privacy," 16.

⁶⁷ Alan F. Westin, *Privacy and Freedom*, (New York: IG Publishing / Association of the Bar of the City of New York, 1967), 24.

⁶⁸ Holvast, "History of Privacy," 16.

freedom are typically understood as matters of liberty, and personhood as a matter of dignity, control does not necessarily align solely with either liberty or dignity. Whitman demonstrated that “control” adapts to reflect the underlying cultural value, respect and social honor in Europe, autonomy and non-interference in America. Thus, “control” is a flexible term that bridges both approaches depending on the legal and cultural setting.⁶⁹ The term ‘liberty’ is derived from the Latin word ‘Liber’ which means free from all shackles or bonds. The liberal writers use the terms ‘Liberty’ and ‘freedom’ synonymously.⁷⁰ The terms liberty and freedom mostly imply a negative or defensive meaning. On the other hand, control means having the final say over how, what, when, and where information about oneself is used. In both cases, the individual retains the ability to decide about their data. Therefore, control and liberty do not necessarily produce different consequences. To achieve distinct results, we should instead focus on the third element, “personhood”, which implies viewing privacy as an ultimate goal and an intrinsic, self-standing value rooted in human dignity.

Dignity is the embodiment of a fundamental value broadly accepted by all peoples and forms the primary cornerstone in the structure of human rights. It is recognized as foundational right that gives rise to all other rights.⁷¹ This universality character renders the right more powerful and attracts the application of universal rules, both encompassing positive law and natural law. By contrast, liberty cannot provide such protection. Maeve Cooke argues that while negative liberty is necessary, it is insufficient, as privacy is deeply tied to human dignity, autonomy, and ethical self-realization.⁷²

The main international and regional frameworks embed privacy protections that safeguard both dignity and liberty. Art 17 of the ICCPR and Art 12 of the UDHR protect against arbitrary or unlawful interference with privacy, family, home, and correspondence, addressing dignity through the protection of honor and reputation and liberty through freedom from state intrusion. Art 8 of the ECHR affirms the right to respect for private and family life, balancing dignity as emotional with liberty as freedom from governmental interference. Art 8 of (ECHR) and Art 7 of the EU Charter reinforce these principles, linking respect for private and family life (dignity) with data protection (liberty and control), reflecting privacy in a modern understanding. Additionally, Art 1 of the charter provides for the dignity explicitly, indicating strong transformation towards dignity approach.

⁶⁹ James Q. Whitman, “The Two Western Cultures,” 1167.

⁷⁰ Khushboo Mahajan and Meetu Mahajan, “Understanding Liberty,” in *Political Theory and Thought: Western and Indian Traditions*, chap. 11, INFLIBNET e-book, 2018, <https://ebooks.inflibnet.ac.in/psp07/chapter/understanding-liberty/>.

⁷¹ Rex D. Glensy, “The Right to Dignity,” *Columbia Human Rights Law Review* 43, no. 1 (2011): 68, 69.

⁷² Maeve Cooke, “A Space of One’s Own: Autonomy, Privacy, Liberty,” *Philosophy & Social Criticism* 25, no. 1 (1999): 24, <https://doi.org/10.1177/019145379902500102>.

4. Conclusion

Though there is no specific point in history to which privacy can be traced, certain elements of privacy have existed across different times and places. At first, it was mainly about intrusion into the physical domain. People felt something was wrong when their privacy was breached, even if they did not use the term “privacy” itself. With the rise of publication and technology, privacy took a new direction. Warren and Brandeis were the first to define it as “the right to be let alone.”

Privacy is widely recognized as a challenging concept. One of the main reasons for this difficulty is that it is often conflated with other similar notions such as slander, libel, and the infliction of emotional distress. This conflation leads reductionists to deny any independent value for privacy. However, the distinctive feature of privacy lies in the fact that the truth or falsity of the information is irrelevant, once an intrusion or disclosure occurs, the harm is presumed. Although the reductionist view of privacy has weakened in the face of the global recognition of its importance, conceptual challenges remain. Among coherentists, there are differing perspectives on how privacy should be understood, but the entire discussion can generally be summarized in three key terms: liberty, control, and personhood. While “control” implies a more active role compared to mere “liberty,” both ultimately aim at the same outcome, ensuring that individuals have the final say over their own data. Nevertheless, control and liberty alone cannot provide sufficient protection unless they are linked to the intrinsic value of human dignity. By incorporating this human dimension, legislators and judges can be granted broader discretionary power to adjudicate privacy-related cases.

Recommendations

Privacy should be defined as a composite concept encompassing control, liberty, and personhood, without excluding any of these elements.

The most distinctive feature of privacy lies in the protection of information itself, regardless of whether that information is true or false; an idea closely tied to human dignity.

While liberty, control, and dignity provide the moral foundations for privacy, it is also necessary to clearly define the types of information that merit legal protection.

Since privacy often overlaps with other areas of law, establishing a human rights-based foundation is essential to ensure consistency and coherence in its protection.